IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2727 of 2005
Date of Decision: 26.9.2006

Ashok Malik ...Appellant

Versus

Maharishi Dayanand University Rohtak and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Rameshwar Malik, Advocate, for the appellant.

JUDGMENT

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby his suit for mandatory injunction directing the University to issue degree of graduation, was dismissed.

The plaintiff has appeared in BA Part-III examination of the defendant-University in April, 1993, as a regular student. The plaintiff was placed in compartment i.e. re-appear in English and Economics. The plaintiff applied for re-evaluation and on re-evaluation, it is the case of the plaintiff that he was declared pass and detailed marks card (DMC) dated 27.12.1993, was received by the plaintiff from the University by post. Thereafter, the plaintiff has done LLB Course from a College at Hanumangarh. The plaintiff earlier appeared for MA previous examination with the defendant-University in the year 1994. Since the plaintiff required graduation degree for obtaining a licence to practice as an Advocate, he applied for the degree but the degree was not issued as his detailed marks

certificate was found to be a forged one.

In the written statement, it was pointed out that the detailed marks certificate is not as per the University record and the same is forged one and obtained fraudulently. It was found that the result of re-evaluation was declared without any change. On 28.8.1997, the plaintiff approached the defendant to inquire about his MA degree and it was found that the plaintiff has got compartment in English and Economics. The plaintiff was asked to produce his detailed marks certificate and when produced, it was found that such certificate has been fraudulently managed by the plaintiff. During the course of trial, the University has produced the entire record in respect of the result of the plaintiff which is to the effect that he has not passed out BA Part-III examination in the subjects of English and Economics and therefore, the detailed marks certificate to the effect that he has passed any such examination is clearly contrary to the record.

Learned counsel for the appellant has vehemently argued that the inquiry was conducted by the University at the back of the plaintiff and any such inquiry is violative of the principles of natural justice. Had the plaintiff been associated, he would have explained that such DMC was issued genuinely. However, the said argument did not find favour with the Courts below, in as much as, it has been that as per the oral and documentary evidence produced on record, the detailed marks card Exhibit D.4, does not tally with the original record and therefore, said certificate cannot form basis for issuance of the degree to the appellant.

In support of his contentions, learned counsel for the appellant has referred to **Sanatan Gauda v. Berhampur University and others AIR 1990 SC 1075, M.J.P. Rohilkhand University Bareilly v. Harjendar**

Singh and another AIR 2001 Allahabad 192 and **Suresh Chandra Choudhury v. The Behrampur University and others AIR 1987 Orissa 38**. However, the said judgments are not applicable in the facts of the present case. In the present case, it has been found as a matter of fact that DMC was not issued by the University. The original record produced by the University shows that the petitioner has got re-appear in English and Economics, whereas the DMC on the basis of which the appellant has claimed degree is not in terms of the records of the University. Since the DMC, the very basis of the suit is not in terms of the records of the University, no order could have been passed by the Courts below so as to issue degree to the plaintiff to the effect that he has passed out graduation from the University. Once the record has been produced before the Civil Court to prove that the DMC is forged, it cannot be said that the plaintiff was entitled to any opportunity of hearing. It is the plaintiff who has sought degree on the basis of DMC, which has not been found to be genuine. Therefore, the plaintiff cannot claim any relief on the basis of such DMC.

Concurrent findings of fact have been sought to be disputed by re-appreciation of evidence. Such findings cannot be said to be suffering from any patent illegality or irregularity, which may raise any substantial question of law in the present second appeal.

Hence, the present appeal is dismissed.

26.9.2006 (Hemant Gupta)
ds Judge